



**Office of the Attorney General
State of Texas**

DAN MORALES
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August 20, 1992

Ms. Helen L. Campbell
Commissioner
Office of Fire Fighters'
Pension Commissioner
3910 IH-35, Suite 235
Austin, Texas 78704

Letter Opinion No. 92-37

Re: Whether the board of trustees of a fire fighters' relief and retirement fund organized under V.T.C.S. article 6243e, may delegate all of its authority over investments to investment managers (ID# 15534)

Dear Ms. Campbell:

You have requested our opinion as to whether the board of trustees of a fire fighters' relief and retirement fund organized under article 6243e, V.T.C.S., may delegate all of its authority over investments to investment managers. Section 28 of article 6243e provides, in pertinent part:

(a) A board of trustees established under this Act may employ professional investment counselors *to assist and advise the board in the investment of the assets of the fund*. The investment counseling service must be provided by an organization whose business functions include performing continuous investment advisory service to public retirement systems.

V.T.C.S. art. 6343e, § 28(a) (emphasis added). Subsection 28(a) clearly does not permit the board of trustees to delegate its entire discretionary authority over investments to a professional investment counselor. "Assist and advise" is a phrase which expressly circumscribes the duties of any investment counselor selected by the board, to the extent that the board will retain all final decision-making with regard to investments.

Chapter 802 of the Government Code is applicable to "public retirement systems," except for those entities excepted under section 802.002. Section 802.204 provides, in relevant part:

(a) The governing body of a public retirement system may appoint investment managers for the system by contracting for

professional investment management services with one or more organizations, which may include a bank if it has a trust department, that are in the business of managing investments.

Gov't Code § 802.204(a). For purposes of this opinion, we will assume *arguendo* that a fire fighters' relief and retirement fund is a "public retirement system" under chapter 802, and further, that, under section 802.204, the board of trustees of a "public retirement system" may delegate its complete discretion regarding investments to an "investment manager."

Article 6243e is the more specific statute, in that it applies only to fire fighters' retirement systems. V.T.C.S. art. 6243e, §§ 2, 3. By contrast, chapter 802, Government Code, is applicable to a much broader range of "public retirement systems." Gov't Code § 802.001. It is well established that, if a general statute conflicts with one that is more specific, the latter prevails. See *Espinosa v. Price*, 188 S.W.2d 576 (Tex. 1945). Thus, with respect to the authority of a board of trustees of a fire fighters' relief and retirement fund to delegate its investment discretion, subsection 28(a) of article 6243e is the controlling provision. Accordingly, such a board may employ "investment counselors" to provide "advice and assistance," but it may not delegate its entire discretionary authority over investments to an "investment manager."

S U M M A R Y

The board of trustees of a fire fighters' relief and retirement fund organized under article 6243e, V.T.C.S., is not empowered to delegate its entire discretionary authority over investment decisions to an investment manager.

Yours very truly,



Rick Gilpin
Deputy Chief
Opinion Committee